



## 98TH GENERAL ASSEMBLY

### State of Illinois

2013 and 2014

HB5729

by Rep. Emily McAsey

#### SYNOPSIS AS INTRODUCED:

755 ILCS 5/2-6.2a new

Amends the Probate Act of 1975. Provides that if a person is shown by clear and convincing evidence to have financially exploited an elderly person or a person with a disability, any property, benefit, or other interest to which the person is entitled by reason of the death of the financially exploited decedent shall pass as if the person who committed the financial exploitation died before the decedent, except that, with respect to joint tenancy property, the interest possessed prior to the death by the person committing the financial exploitation shall not be diminished. Provides that a determination of financial exploitation may be made by any court of competent jurisdiction, separate and apart from any criminal proceeding arising from the financial exploitation, except that the civil proceeding may not proceed to trial nor may the person be required to submit to discovery in the civil proceeding until any criminal proceedings have been finally determined by the trial court or, if no criminal charge has been brought, prior to one year after the date of the decedent's death. Provides that the holder of property is not liable for distributing or releasing the property to the person committing financial exploitation if the distribution or release occurs prior to a determination made under the new provisions. Provides that if the holder of property knows or has reason to know that a potential beneficiary financially exploited a decedent, the holder shall fully cooperate with law enforcement authorities and judicial officers in connection with any investigation of the financial exploitation. Provides that a person financially exploits an elderly person or a person with a disability when he or she knowingly and by deception or intimidation obtains control over the property of an elderly person or a person with a disability or illegally uses the assets or resources of an elderly person or a person with a disability.

LRB098 17177 HEP 52265 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Probate Act of 1975 is amended by adding  
5 Section 2-6.2a as follows:

6 (755 ILCS 5/2-6.2a new)

7 Sec. 2-6.2a. Person who financially exploited decedent.

8 (a) If a person is shown by clear and convincing evidence  
9 to have financially exploited an elderly person or a person  
10 with a disability, any property, benefit, or other interest to  
11 which the person is entitled by reason of the death of the  
12 financially exploited decedent shall pass as if the person who  
13 committed the financial exploitation died before the decedent,  
14 except that, with respect to joint tenancy property, the  
15 interest possessed prior to the death by the person committing  
16 the financial exploitation shall not be diminished by the  
17 application of this Section. A determination under this Section  
18 may be made by any court of competent jurisdiction, separate  
19 and apart from any criminal proceeding arising from the  
20 financial exploitation, except that the civil proceeding may  
21 not proceed to trial nor may the person be required to submit  
22 to discovery in the civil proceeding until any criminal  
23 proceedings have been finally determined by the trial court or,

1 if no criminal charge has been brought, prior to one year after  
2 the date of the decedent's death.

3 (b) The holder of any property subject to this Section is  
4 not liable for distributing or releasing the property to the  
5 person committing financial exploitation if the distribution  
6 or release occurs prior to a determination made under this  
7 Section.

8 (c) If the holder of property subject to this Section knows  
9 or has reason to know that a potential beneficiary financially  
10 exploited a decedent within the scope of this Section, the  
11 holder shall fully cooperate with law enforcement authorities  
12 and judicial officers in connection with any investigation of  
13 the financial exploitation.

14 (d) For purposes of this Section, a person financially  
15 exploits an elderly person or a person with a disability when  
16 he or she knowingly and by deception or intimidation obtains  
17 control over the property of an elderly person or a person with  
18 a disability or illegally uses the assets or resources of an  
19 elderly person or a person with a disability.